

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Reissue of Letters Patent 5,599,804

Applicant(s): Lawrence C. Mudge

Serial No.: 10/849,509

Filed: May 19, 2004

Art Unit: 1616

Examiner: Alton M. Pryor

For: FUNGICIDAL COMPOSITIONS FOR THE ENHANCEMENT OF TURF
QUALITY

Mail Stop
Commissioner for Patents
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

SIR:

REQUEST FOR RECONSIDERATION

This communication responds to the non-final office action dated July 7, 2008, which rejected all of the pending claims, claims 1-8, 10-17, 20-35, 37 and 38. That was the fifth non-final office action in this reissue application. In order to expedite proceedings and crystallize issues, the Examiner and his supervisor, Dr. Johann Richter, agreed to conduct a personal interview with the undersigned which would involve, directly or indirectly, a representative from the Quality Assurance Branch. That personal interview was conducted on August 20, 2008. The applicant and the undersigned wish to thank both Mr. Pryor and Dr. Richter for their courtesies and their efficiency in preparing for and conducting the interview. A summary of the interview is included in the remarks below.

To facilitate the interview, applicant submitted to the examiner on August 18, 2008, a proposed "Reissue Application Declaration By The Assignee" and a proposed "Statement Under 37 CFR 3.73(b)." At the interview Dr. Richter and Mr. Pryor indicated that they, as well as a Quality Assurance representative, had reviewed these papers prior to the interview and had found them acceptable, and if executed and formally submitted, they would overcome the rejection under 35 U.S.C. § 251 and the objection under 37 C.F.R. § 3.73, that had been made in the last office action. Submitted herewith are the two executed documents. It is therefore, respectfully requested that this rejection and objection be withdrawn.

At the interview, the rejection under 35 U.S.C. § 103(a) based on the Myajima reference or Kamimura reference in view of the Fenn publication was discussed. The undersigned pointed out that the Myajima and Kamimura references were from an art that differed significantly from that represented by the Fenn publication and from the art related to the present claims. Hence, there lacked a basis for a person of ordinary skill in the art pertinent to the presently claimed invention to consider these two references in the context of the claimed invention and to combine these two references with the Fenn publication.

The Myajima reference describes a composition used in hospitals for sterilizing medical goods and acting as a microbicide. The composition consists of a phthalocyanine-iron derivative and an organic peroxide. The Kamimura reference describes a composition used as a microbicide and deodorant to treat socks and the like. The composition is described as an alkali solution containing a phthalocyanine derivative. Absent in these references is any teaching or suggestion that these compositions would have any agricultural use, particularly in a different composition applied to turf grass in a fungicidal treatment. Not only would the phthalocyanine compounds in these two references have to be isolated and incorporated in a composition

a phosphorous acid or with a phosphorous acid or an alkali or alkali earth metal salt thereof, as required by the present claims.

Mr. Pryor and Dr. Richter stated at the interview that the foregoing arguments were persuasive and if presented in a request for reconsideration, the rejection under 35 U.S.C. § 103(a) would be withdrawn.

The undersigned noted at the interview the request in the last office action to reproduce the claims presented in this reissue application in accordance with 37 CFR § 1.173(d). A proposed listing of claims was presented at the interview. A formal copy of the listing of claims appears as an attachment to this communication.

CONCLUSION

Based on the foregoing amendments and remarks, the listing of claims below and the accompanying “Reissue Application Declaration By The Assignee” and “Statement Under 37 CFR 3.73(b),” applicants respectfully request reconsideration and withdrawal of all rejections and early allowance of the present claims.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Request for Reconsideration to Deposit Account No. 13-4500, Order No. 0624-4129.

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Respectfully submitted,
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Dated: August 22, 2008

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